

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
SEPTEMBER 10, 2014**

**CALL TO
ORDER
6:03 pm**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Tim Calaway, Ron Schlegel, Jim Heim, Jeff Larsen and Greg Stevens. Noah Bodman had an excused absence. Gene Shellerud arrived at 6:46 pm. BJ Grieve and Erik Mack represented the Flathead County Planning & Zoning Office.

There were 15 people in the audience.

**APPROVAL OF
MINUTES
6:04 pm**

Larsen made a motion, seconded by Heim to approve the May 14, 2014 meeting minutes.

Heim brought up board questions concerning the discussion of a '100 to 1 slope or ratio' which was referred to both ways in the minutes. He asked the minutes state '100 to 1 ratio'.

The board discussed at length the definitions of '100 to 1 slope' and '100 to 1 ratio' and if they were the same.

Heim withdrew his suggestion.

On a roll call vote the motion passed unanimously.

**PUBLIC
COMMENT
(not related to
agenda items)
6:09 pm**

Russ Crowder, America Dream Montana, 2868 Lower Lost Prairie Rd, wanted to comment on the interim zoning on the Whitefish Donut area. He read a statement in the daily InterLake concerning the zoning. He was encouraged the Planning Board would be involved as well as the public. It was the first time he had heard of the County Attorney's office having any concern in public participation in the twenty years he had been involved in issues in Flathead County. They were also encouraged that the board would be involved in the process. There were certainly qualified people on the board who had been around a lot longer than he had and would give excellent advice and guidance to the county commissioners. They agreed with the action the county took, they believed it was a good idea to keep the interim zoning and adopt it that way. Grieve pointed out earlier it did not mean they kept all of Whitefish's zoning. In a year's time it would expire and they could only extend it for one more year. What they would like to see is a recommendation from the board that

any permanent zoning involve the process outlined to ensure public participation under state law MCA 76-2-010. This had been a real special situation. There were about 3,000 property owners who basically had been told for 12 or 13 years by the city of Whitefish, "Screw you, we don't care what you say, we don't care what you think, we're going to tell you what you can or can't do with your property." They thought it should be the other way around, especially for these poor people. They wanted to know if they even wanted zoning. Then there was a process that was set up to determine that so it would be their choice and not some bureaucrat or elected public official's. They hoped that when the time came, they would take a look at 76-2-010 and that will be one of the things they would consider recommending to the county commissioners when they asked the board "What do we do now when the interim zoning is over?" He asked for questions.

There were none.

Dave DeGrandpre, land use planning consultant with Land Solutions in Charlo, Montana, was here to talk to the board about the former Whitefish donut area which was now under Flathead County's jurisdiction. He had a couple of clients who own property on the Highway 93 corridor in the donut area south of Whitefish. He first got involved in the area in 2007 with those property owners. That was when the city of Whitefish was adopting its growth policy. At that time, the city of Whitefish, under pressure from some of the land owners there, also Gary Hall and the other county commissioners, asked the city of Whitefish to consider this stretch of the highway south of Whitefish and some other stretches of property for a corridor plan or some special district planning. The circumstances were fairly unique. The stretch of property he was talking about was agricultural zoning, basically agricultural and residential which clearly did not fit. The land use patterns, the constraints and things like that, the traffic, the bottom line on that stretch of highway. So Whitefish had intended to, in the growth policy they wrote they were going to do some sort of corridor study. That never happened. For some reason, budgets shrank, they didn't have the man power but also there was the jurisdictional control issue, lawsuits, and so neither Flathead County nor the city of Whitefish chose to act. They wanted to let this jurisdictional issue play out in the courts which it ultimately did. So now the ball was in the board's court. He was here to ask the board to take some action, to move forward. What that might look like in

terms of process, he was not sure, but he had come up with at least four different options which the board would hopefully receive in their packets. One option was for the board to update the 1996 City-County Master Plan, now the County Plan for this area. That could be a fairly extensive process because it is a pretty thick document. It could be a fairly extensive undertaking. It might take a couple of years just to update the plan realistically. It might be one, maybe two, it would be a while to update the plan and adopt zoning on top of it. You could do that in house, you had the expertise here. You could also hire some consulting help. That was one option. A more abbreviated option was to look at the goals and policies the board had in the 1996 plan. Start with that. Start with what's already been laid out, the groundwork that was already there, and adopt the ones or at least chew on the ones which made sense to them right now which reflect the current conditions they thought might be relevant now. Use that as a starting point. But ultimately they were talking about the zoning in this area.

Donna Valade, Board Secretary, handed the board copies of the list of options submitted by DeGrandpre.

DeGrandpre continued to say a third option might be to simply go straight to the zone. Use your best expertise, use the expertise of your planning staff and try to put together a draft zoning map. Certainly there would have to be a public process. In any of these there would have to be a public process. Montana law requires it in fact, as Mr. Crowder pointed out to the board. You could go straight to the end game. That would be a quicker, easier process, have the public involved and they could help the board refine it. The fourth option, which is not an option he would recommend, but it was out there, was to do nothing. That was simply to let the interim zoning expire and have no rules, at least no zoning in place in the donut area. It was not one he recommended because he thought the city of Whitefish or the area surrounding Whitefish was too important to the Flathead economy. He thought people had made great investments in their property and done a lot to try to make it a destination, so he would not recommend that. Whatever the board chose to do, he asked the board to get started soon. That they come up with a plan of how they were going to address the situation and get going. Because a two year period, you have one year interim zoning and with the possibility of extension for one year, that would fly by real fast. So he asked at the next meeting, the board make it an agenda item where they would

think through some of the different options the board had and come up with a plan.

Calaway and DeGrandpre briefly discussed where the properties were of the people DeGrandpre represented were and the length of the process his clients had been through.

DeGrandpre said the people in the area would like to see a resolution to the situation because they had not been able to do anything. He asked the board to take a leadership role and get the process started.

**MCMAHON /
HANNOCK
(FZC-14-04)
6:18 pm**

A Zone Change request in the Blanchard Lake Zoning District by Michael & Monica McMahon and Charles & Pamela Hannock. The proposal would change the zoning on approximately 20.7 acres from AG-20 (Agricultural) to SAG-10 (Suburban Agricultural). The property is located at 288 Squirrel Lane.

STAFF REPORT

Mack reviewed Staff Report FZC 14-04 for the Board.

**BOARD
QUESTIONS**

Stevens and Mack discussed the size of parcels in proximity to the applicant property.

Calaway and Mack discussed the shape of the property and the access to the property.

**APPLICANT
PRESENTATION**

None.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

Hickey-AuClaire verified no written public comment had been received on this application.

No public in attendance commented on this application.

**STAFF
REBUTTAL**

None.

**BOARD
DISCUSSION**

The board and Mack discussed if there was possibility of a subdivision or development on the property in the future.

**MAIN MOTION
TO ADOPT
F.O.F.
(FZC-14-04)**

Calaway made a motion seconded by Larsen to adopt staff report FZC 14-04 as findings-of-fact.

**BOARD
DISCUSSION**

Heim said there were five and ten acres around the property already, so he would be in favor of the application.

Stevens said a zone change in the area would not change the uses much, it would allow them to have two residences instead of one. He didn't think having two dwellings would change things much.

Schlegel and Mack discussed if the entire property had been thinned as evidenced in the photos and if it was fire safe.

**ROLL CALL TO
ADOPT F.O.F.
(FZC-14-04)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO
RECOMMEND
APPROVAL OF
CONDITIONS
(FZC-14-04)**

Stevens made a motion seconded by Calaway to adopt Staff Report FZC 14-04 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
RECOMMEND
APPROVAL OF
(FZC-14-04)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Hickey-AuClaire reviewed the process the application would take from this point on.

**PLANNING
BOARD-HOME
OCCUPATION
(FZTA-14-01)
6:30 pm**

A request by the Flathead County Planning Board for an amendment to the text of the Flathead County Zoning Regulations (regulations) to revise the performance standards regarding home occupations based on the Planning Board's discussion at a Planning Board workshop on February 24, 2014. The general character of the specific proposed amendment is:

Changes to restrictions on vehicle traffic for a home occupation

currently found in Section 5.06.020(1)(E), and allowing for additional vehicle traffic when the home occupation is reviewed as a conditional use permit by adding Section 5.06.020(2)(C).

STAFF REPORT Mack reviewed Staff Report FZTA-14-01 for the Board.

BOARD QUESTIONS Stevens and Mack discussed a written public comment submitted from Hagen at the meeting which raised the question of if the zoning regulations applied to the South Woodland-Green Acres Neighborhood Plan and if they could already have a home based occupation currently under the neighborhood plan.

Larsen and Mack discussed zones where if the trips went above eight vehicles all day or three at one time it warranted a Conditional Use Permit (CUP). They also discussed what the Board of Adjustment could condition and if any residential zoned property would be able to apply for a CUP.

Grieve explained the reason for the comment which was a recent application which had been scheduled before the BOA, but had been withdrawn, for a home occupation. He explained the reason it was not allowed in higher density zones. He was trying to clear up any confusion between an issues raised at a BOA meeting which related to the amendment which had been in process for a while.

Stevens and staff discussed the outcome of the application, restrictions on a home occupation, where the confusion could come from reading an article in the paper that day concerning the meeting and the recent application. They also discussed if a home occupation could be in an accessory structure and how that could be done.

AGENCY COMMENTS None.

PUBLIC COMMENT Hickey-AuClaire confirmed the board had sufficient time to review the submitted written comment.

Glenn Graham, 739 Greenridge Dr, was against the application.

Erica Wirtila, NMAR, 100 Cooperative Way, was in favor of the application.

Mayre Flowers, Citizens for a Better Flathead, 34 4th Street West, was against the application.

Hugh Robertson, 545 Howard Drive, was against the application.

Rena Hagen, 586 Willow Glen Drive, was against the application.

The board, Hagen and Grieve discussed at length who enforced the conditions of a home occupation, the homeowners' option to report violations, process, how long the code compliant person had been employed by the planning office, how many violations had been taken care in the backlog and what generally happened with complaints.

**STAFF
REBUTTAL**

None.

**BOARD
DISCUSSION**

The board and Grieve discussed the change in the requirements for traffic and the use of a CUP and conditions which could be applied.

Grieve wanted to bring back to the boards' attention there was no standardized term for vehicle traffic so the text amendment contained vehicle trips which did have a standard definition.

Hickey-AuClaire and Grieve discussed if they needed to have a definition for vehicle traffic.

Calaway and Grieve discussed if general deliveries would count for vehicle trips.

**MAIN MOTION
TO ADOPT
F.O.F.
(FZTA-14-01)**

Calaway made a motion seconded by Schlegel to adopt staff report FZTA-14-01 as findings-of-fact.

**BOARD
DISCUSSION**

Stevens said he was sensitive to people's concerns for their neighborhood. He said neighbors could make lives miserable. The planning director with the commissioners had developed the best enforcement he had seen but all types of enforcement used complaint based violations. It was tough because someone had to count the trips if there violations, it fell to neighbors which was difficult. He went on to explain the thinking behind differences of vehicle trips between the zones. He knew there were a lot of unfounded fears when regulations were either

implemented or changed. Most of the time the things which were feared never come to be. He recounted the story he lived by a business and could see nothing but problems. What actually happened was they were there when he was gone and gone when he was at home. He said Flowers' concern with the compatibility of the County regulations with every other set of zoning regulations, mainly the cities, was mainly compatibility. There would be differences between the sets of regulations, but as long as they were fairly compatible that was the best they could do. He would probably support the application.

Larsen explained the board's thought process about the amendment and the goals of the amendment especially in the AG zones. He felt the amendment was compatible with neighboring cities zoning and the BOA could address impacts during the CUP process.

Stevens thought between the BOA and planning department enforcement there would be some protection for the neighbors.

**ROLL CALL TO
ADOPT F.O.F.
(FZTA-14-01)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

None.

**MAIN MOTION
TO
RECOMMEND
APPROVAL OF
CONDITIONS
(FZTA-14-01)**

Calaway made a motion seconded by Heim to adopt Staff Report FZTA-14-01 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

None.

**ASK THE
QUESTION**

Calaway asked the question.

**ROLL CALL TO
RECOMMEND
APPROVAL OF
(FZTA-14-01)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Hickey-AuClaire explained for the audience what the process would be for the application from this point.

**PLANNING
BOARD-ADUs
(FZTA-14-02)
7:25 pm**

A request by the Flathead County Planning Board for an amendment to the text of the Flathead County Zoning Regulations (regulations) to revise the performance standards regarding accessory dwelling units based on the Planning Board's discussion at a Planning Board workshop on March 12, 2014. The general character of the specific proposed amendment is:

Amend the regulations by adding 'Dwelling unit, accessory (ADU)' to the list of permitted uses in AG-80, AG-40, AG-20, SAG-10, SAG-5, and R-1 zoning districts found in Sections 3.04, 3.05, 3.06, 3.07, 3.08, and 3.09, by adding 'Dwelling unit, accessory (ADU)' to the list of conditional uses found in R-2, R-3, R-4, R-5, RA-1 and R-2.5 in Sections 3.10, 3.11, 3.12, 3.13, 3.15 and 3.43, by adding 'Dwelling unit, accessory (ADU)' to the list of accessory uses found in Section 5.01.020(1) and 5.01.020(3), by amending Section 5.01.030(7), by adding a parking standard to Section 6.02.060 and a definition to Section 7.05.150.

STAFF REPORT

Mack reviewed Staff Report FZTA-14-02 for the Board.

**BOARD
QUESTIONS**

Stevens, Larsen and Mack discussed if a CUP was needed to have a caretaker's unit on a piece of property, if it was allowed in certain zones and if DEQ approval was necessary for each of the uses such as ADU, caretaker's unit, etc.

Stevens and Mack discussed who assembled the packets for the workshops on ADUs.

Stevens said staff went to lengths to get the board information on ADUs in relation to the ADU questions. Washington had the same thing in place for 20 years. There was virtually no negative feedback. The same as in Oregon. They went to a lot of work to see what worked and what didn't work in similar areas.

Grieve summarized what research had been done for the board and the documents available online.

Stevens was glad to hear the documents were online because if anyone had any fears as to how ADUs worked, there was information from the state of Washington and Oregon which allayed his fears about ADUs. He thanked the staff for their work.

Calaway said staff had used wonderful resources.

Mack said the information was available at the office.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

Hickey-AuClaire confirmed no more written comment had been received by staff.

Erica Wirtila, NMAR, 110 Cooperative Way, was for the application.

Mayre Flowers, Citizens for a Better Flathead, 35 4th Street West, was against the application.

**STAFF
REBUTTAL**

None.

**BOARD
DISCUSSION**

Grieve urged the board to review the written comment submitted as well as the verbal comments to make sure they were familiar with the contents and consider all the comments made.

The board and staff discussed at length what constituted 40% of the primary house, if duplexes or townhomes could have an ADU and restrictions for an ADU.

The board took a 5 minute break.

**MAIN MOTION
TO ADOPT
F.O.F.
(FZTA-14-02)**

Stevens made a motion seconded by Heim to adopt staff report FZTA-14-02 as findings-of-fact.

**BOARD
DISCUSSION**

Stevens thanked the staff for the information which was important to discuss the topic and Wirtila for reminding the board there were only one per 1,000 homes which had an ADU in Washington and Oregon. He said part of his deliberations was his experience of living in apartments in homes while going to college and how the agreement benefited both parties. The apartments didn't alter the character of the neighborhood and there were restrictions which helped maintain the character.

The board discussed in depth if the affordability of houses would

change with ADUs and high end dwellings which basically had an ADU built in.

Stevens said when he was on the board in previous years they tried to provide affordable housing and it was very difficult with all of the processes and regulations which had to be followed. This was a way to provide some units to some people and gave examples of how it would benefit a range of people. He did not think they would be overwhelmed with ADUs. Those who could make it work would make it work. He thought it was a win-win situation all around. He referred to the research and said there hadn't been a down side in twenty years. He was strongly in favor of the amendment.

Larsen thought there were some valid concerns with the public comment from Citizens for a Better Flathead. He knew from working with DEQ and land use for his whole his career, that it would be difficult to have approval for a second dwelling on a lot of pieces of property in Flathead County. He gave examples of where that was the case given the regulations of DEQ. He also said covenants and other restrictions in requirements stopped a lot of the possibility of an ADU. Concerning affordability, it was a supply and demand issue. If they could provide more ADUs, the price would go down. He did see the issues but thought there were a lot of things in place which would stop a free for all. He was not downplaying the concerns. He felt they had it covered with the regulations in place.

The board discussed what would need to happen to have an ADU and the restrictions in place and situations where an ADU would benefit the occupants.

**ROLL CALL TO
ADOPT F.O.F.
(FZTA-14-02)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

None.

**MAIN MOTION
TO
RECOMMEND
APPROVAL OF
CONDITIONS
(FZTA-14-02)**

Stevens made a motion seconded by Schlegel to adopt Staff Report FZTA-14-02 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

Larsen recounted an incident where one of his clients was unable to have a guest house per DEQ requirements and what his remedy was. That was an example of what DEQ regulations did. He further explained some of the DEQ requirements. He reiterated the setbacks and covenants would eliminate the possibility of an ADU. He saw why there was only one in 1,000 lots which did have an ADU. He did not feel the fears concerning them would come to pass.

Heim thought a lot of effort and discussion went into the application. There was some public input wanting the amendment, which was how it began. He thought they looked at it and researched it. It was not going to be overwhelming. He thought the results would be the same here as they were in Washington and Oregon. The community College needed the extra housing. He was in favor of the application.

Schlegel said there were ordinances for noise and animals and some people would not allow animals in the ADUs.

Schlegel and Hickey-AuClaire discussed there were places in the county which would support animals.

Shellerud was leery of density pollution especially in smaller areas where sewer and water were supplied by municipalities. He was also leery of neighborhoods where people added 40% onto their house where they have basically created a twin home. He saw a lot of concerns and was not in favor of the application the way it stood.

Hickey-AuClaire was very supportive of the proposal. She thought of the whole process the story of Stevens' situation and how it was a win-win situation.

**ASK THE
QUESTION**

Calaway asked the question.

**ROLL CALL TO
RECOMMEND
APPROVAL OF
(FZTA-14-02)**

On a roll call vote the motion passed 7 to 1 with Shellerud dissenting.

**BOARD
DISCUSSION**

Hickey-AuClaire reviewed the process the application would follow from this point on.

OLD BUSINESS
8:30 pm

None.

NEW BUSINESS
8:30 pm

Grieve asked the board to call a special meeting two weeks from tonight on September 24, 2014. He reviewed which lakes were in the county jurisdiction and which had been in Whitefish's jurisdiction and gave a history of the existence of each regulations and which document was being used by the county currently for Whitefish and Lost Coon Lake. The commissioners supported the idea of bringing a list of options, as best staff could see them, to the board as well as a general list of the pros and cons of the options. Because Montana Code states the governing body should seek the recommendation of the Planning Board, the commissioners would like the recommendation from the board as to how to proceed. He had a list of options which he handed the board, would make available to the general public and will post to the website tomorrow morning. The request was the board holds a workshop on September 24, 2014 to discuss options concerning the lakeshore regulations for Whitefish and Lost Coon lakes. He summarized what would be sent to the board for the workshop for their review. He read from their bylaws the procedure for calling a special meeting/workshop. He discussed what the office would do to make everything available to the public. Public participation and comment was encouraged which was very valuable. The options document created focus for the workshop. There was no discussion on the agenda for tonight. He was asking for a special meeting. He asked the board to refrain from discussion on the topic. He would be able to answer questions.

Hickey-AuClaire and Grieve discussed if the board needed to create an agenda to help with the flow of the workshop and what the agenda items would be.

Grieve explained process and what was in the board's bylaws concerning workshop session and process.

The board and Grieve discussed if there was a limited time for each public comment and if one could be set.

Grieve passed out and explained information for the board to consider for the workshop.

The board and Grieve discussed what results were expected from

the workshop which was a recommendation to the commissioners.

Calaway and Grieve discussed the public perceptions about Whitefish Lake since the jurisdiction had reverted to the county.

Grieve explained at length what had happened to this point concerning lakeshore regulations on Whitefish Lake and what could be enforced at this time. He also reiterated the purpose of the workshop. He would be coming to the board soon with the proposal of a workshop concerning interim zoning for the former Whitefish 'Donut'. He reviewed what would be posted online for the public. He had his monthly meeting with the commissioners and offered to review his report for the board if they liked.

The board opted to not hear the report and commended Grieve on his work.

Grieve said he had an incredible staff and would pass their complements on to them.

ADJOURNMENT
8:48 pm

The meeting was adjourned at approximately 8:48 pm. on a motion by Larsen. The next meeting will be held at 6:00 p.m. on October 8, 2014.

Marie Hickey-AuClaire, Chairman

Donna Valade, Recording Secretary

*APPROVED AS **SUBMITTED**/CORRECTED: 10 / 8 / 14*